

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GAMMA TRADERS – I LLC and VEGA
TRADERS, LLC, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH COMMODITIES, INC.,
BANK OF AMERICA CORPORATION,
MORGAN STANLEY & CO. LLC,
EDWARD BASES, JOHN PACILIO, and
JOHN DOE Nos. 1 – 5,

Defendants.

1:19-cv-06002 (AJN)

ROBERT CHARLES CLASS A, L.P. and
ROBERT L. TEEL, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

MERRILL LYNCH COMMODITIES, INC.,
BANK OF AMERICA CORPORATION,
EDWARD BASES, JOHN PACILIO, and
JOHN DOES NOS. 1-10,

Defendants.

1:19-cv-06172 (AJN)

YURI ALISHAEV, ABRAHAM
JEREMIAS, and MORRIS JEREMIAS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MERRILL LYNCH COMMODITIES,
INC., BANK OF AMERICA
CORPORATION, MORGAN STANLEY &
CO. LLC, EDWARD BASES, JOHN
PACILIO, and JOHN DOES 1 - 18,

Defendants.

1:19-cv-06488 (AJN)

STIPULATION AND [PROPOSED] CASE MANAGEMENT ORDER

Plaintiffs Gamma Traders – I LLC and Vega Traders, LLC (“Gamma Plaintiffs”), Robert Charles Class A, L.P. and Robert L. Teel (“Charles Plaintiffs”), Yuri Alishaev, Abraham Jeremias, and Morris Jeremias (“Alishaev Plaintiffs”) (collectively “Plaintiffs”) and Defendants Merrill Lynch Commodities, Inc. and Bank of America Corporation (collectively “Bank of America Defendants”), Edward Bases and John Pacilio (collectively “Individual Defendants”), and Morgan Stanley & Co. LLC (together with Bank of America Defendants and Individual Defendants, “Defendants”) by and through their respective undersigned counsel, subject to this Court’s approval and to the reservation of rights contained in paragraph 6 below, agree and stipulate as follows:

WHEREAS, on June 27, 2019, Gamma Plaintiffs commenced an action (the “Gamma Action”) by filing a complaint (the “Gamma Complaint”) against Defendants;

WHEREAS, on July 2, 2019, Charles Plaintiffs commenced an action (the “Charles Action”) by filing a complaint (the “Charles Complaint”) against Bank of America Defendants and Individual Defendants, alleging substantially similar facts and claims for relief against many of the same Defendants as those alleged in the Gamma Complaint;

WHEREAS, on July 12, 2019, Alishaev Plaintiffs commenced an action (the “Alishaev Action”) by filing a complaint (the “Alishaev Complaint”) against Defendants, alleging substantially similar facts and claims for relief against many of the same Defendants as those alleged in the Gamma Complaint and the Charles Complaint;

WHEREAS, on August 6, 2019, Counsel for Plaintiffs filed a motion to consolidate the above referenced actions, and seeking appointment of Lowey Dannenberg, P.C. and Scott + Scott Attorneys at Law LLP as Interim Co-Lead Counsel for the proposed Class (ECF Nos. 15 & 16);

WHEREAS, Defendants take no position on the appointment of Interim Co-Lead Counsel for the proposed Class;

WHEREAS, Plaintiffs intend to file a consolidated amended complaint (“CAC”) superseding the Gamma Complaint, the Charles Complaint and the Alishaev Complaint;

WHEREAS, the undersigned parties have conferred and reached agreement on a schedule for the filing of the CAC and briefing of any motion(s) to dismiss the CAC;

WHEREAS, this is the first request for an adjournment of Defendants’ time to answer, move to dismiss, or otherwise respond to the complaints filed in the Gamma Action and the Alishaev Action; and the second such request with respect to complaint filed in the Charles Action;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED as follows:

1. Plaintiffs shall file the CAC within 60 days after the Court appoints Interim Co-Lead Counsel.
2. The undersigned counsel for Defendants agree to waive service of process of the CAC on behalf of their respective clients, expressly reserving the right to contest whether any party in the CAC is properly named, and without waiver of any defenses, including those related to personal jurisdiction and venue.
3. Defendants have no obligation to answer, move, or otherwise respond to the Gamma Complaint, the Charles Complaint or the Alishaev Complaint.
4. Defendants’ time to answer, move, or otherwise respond to the CAC shall be as follows:
 - a. Defendants shall answer or move to dismiss the CAC within 60 days after Plaintiffs file the CAC;

b. Pursuant to Rule 3.F of the Individual Rules of Practice in Civil Cases of Judge Alison J. Nathan, Plaintiffs shall notify the Court within 10 days of the filing of any motion(s) to dismiss whether they intend to amend the CAC;

i. If Plaintiffs elect not to amend the CAC, they shall file opposition(s) to any motion(s) to dismiss within 60 days after the date of filing of the motion(s) to dismiss the CAC;

ii. If Plaintiffs elect to amend the CAC, they shall file a new complaint no later than 30 days after they notify the Court of such election; Defendants shall answer or move to dismiss the new complaint within 60 days after the new complaint is filed; and Plaintiffs shall file opposition(s) to any motion(s) to dismiss within 60 days after Defendants move to dismiss the new complaint;

c. Defendants shall file any reply brief(s) within 30 days of Plaintiffs' opposition(s) to any motion(s) to dismiss.

5. This Stipulation shall not act to shorten the time to respond for any Defendant that would otherwise have a longer time to respond to the Complaints pursuant to the Federal Rules of Civil Procedure or any applicable local rules, and shall be without prejudice to any Defendant's right to seek, and Plaintiff's right to oppose, an additional extension of time to respond to the CAC.

6. Except as to the defense of insufficiency of service of process in this Action, no defenses or rights under the Federal Rules, Local Rules or any other laws or regulations, including, without limitation, defenses based upon lack of personal jurisdiction, is prejudiced or waived or curtailed by Defendants' executing, agreeing to, or filing this Stipulation.

Dated: September 12, 2019

/s/ Vincent Briganti (on consent)¹

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¹ Electronic signatures are provided with consent in accordance with Rule 8.5(b) of the Court's ECF Rules and Instructions.

/s/ Mark D. Smilow (on consent)

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Attorneys for Defendant John Pacilio

SO ORDERED.

DATED:

New York, New York

Judge Alison J. Nathan
United States District Judge